IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 939 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KISHOREBHAI DEVJIBHAI VAGH

Versus

STATE OF GUJARAT

Appearance:

MR DIVYESH SEJPAL for Petitioner

MR ST MEHTA, APP, Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 14/12/2000

ORAL JUDGEMENT

Heard learned advocate Mr Divyesh Sejpal for the petitioner and Mr S.T. Mehta for the respondents.

2 The petitioner has challenged the order of

externment dated 19.8.2000 passed by respondent no.2, Sub-Divisional Magistrate, Rajula City, District Amreli, in exercise of the powers conferred under Section 56(a) and (b) of the Bombay Police Act, 1951 ("the Act" for short). The petitioner has also challenged the order of the appellate authority, Deputy Secretary, Home Department, State of Gujarat, dated 28th October 2000 passed under Section 60 of the Act rejecting the appeal of the petitioner in respect to the impugned order of externment.

3 The petitioner was served with show-cause notice under Section 59 of the Act dated 19th June 2000 calling upon the petitioner to show-cause why the petitioner should not be externed for a period of two years from the area comprising District Amreli and contiguous area of District Bhavnagar, Junagadh and Rajkot. The petitioner replied to the said show-cause notice vide letter dated 7th August 2000. However, respondent no.2 in consideration of the material produced before him passed the impugned order externing the petitioner for a period of two years from the area comprising District Amreli and contiguous area of Bhavnagar, Junagadh and Rajkot.

4 Being aggrieved and dissatisfied with the said externment order the petitioner preferred appeal to the State Government under Section 60 of the Act which was also rejected vide impugned order dated 28.10.2000 and thereby the present petition is filed to challenge both the orders.

5 The learned advocate appearing for the petitioner has urged at the Bar that the impugned order suggests that out of 17 offences enumerated in para 6 against the petitioner 14 offences are punishable under Prohibition Act and they are ranging from 30.4.1992 to 10.4.2000. The last offence registered against the petitioner under Chapter XVI and XVII of the IPC was registered vide CR No.103 of 1998 on 10.10.1998. It has been urged that respondent no.2 has acted upon stale incidents on which criminal cases were registered against the petitioner. That the respondent no.2 had failed to consider the reply of show-cause notice whereby the petitioner has specifically stated that said offences were registered on account of family disputes between the members of his family and all of them were settled and compounded prior to issuance of the show-cause notice. That there is nothing showing in the impugned order from which inference could be drawn that the petitioner is an habitual offender or has been using violent force or his movement to the particular area was found dangerous to

the safety of the residents. That respondent no.2 has passed the order observing that proposed externee has been involved in the offences punishable in the Chapter XVI & XVII during the last 3 years prior to the service of the notice and against him offences under the Prohibition Act are also registered. The said aspect clearly shows that there is non-application of mind which has vitiated the order.

6 On perusal of the impugned order it prima facie appears that respondent no.2 has failed to consider the relevant date of the offences registered against the petitioner under IPC Chapter 16 and 17. It could not be disputed that respondent no.2 has taken into consideration all stale incidents which took place prior to three years of issuance of show-cause notice, even according to the observation made by respondent no.2. Thus, non-application of mind on the part of the competent authority is writ at large in the order and as such the order cannot be sustained.

7 As regards the order of the appellate authority, it also suffers from the vice of non-application of mind inasmuch as four points were urged before the appellate authority contending that no material was produced before the externment authority to establish the fact that the petitioner is a habitual offender and has been inflicting violent force in the neighbourhood. That the externing authority has erroneously considered the offences registered against the petitioner on account of family disputes. That the witnesses examined by the petitioner about the good conduct of the petitioner have not been considered and yet without considering any of the grounds rejected the same. The order appears to have been drafted mechanically stating the facts sated in the impugned order of externment are supported by allegation made in the notice served u/s 59 as well as copies of FIR produced on record. Thus, the order of Deputy Secretary, Home Department, State of Gujarat passed in exercise of power conferred under Section 60 of the Act is also bad in law and as such the following orders are passed:-

The petition is allowed. The impugned order of externment dated 19.8.2000 passed by respondent no.2 against the petitioner as well as the appellate order dated 28.10.2000 passed by the Deputy Secretary, Home Department, State of Gujarat, rejecting the appeal of the petitioner are hereby quashed and set aside. Rule to that extent is made absolute. No order as to costs. Direct Service is permitted.

(AK TRIVEDI J.)

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